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Attorneys for Defendant  
LAW OFFICES OF NELSON & KENNARD

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

12 DANA PASQUALE,	)	CASE NO. CV11-05265
13	)	
14 Plaintiff,	)	ANSWER OF NELSON & KENNARD TO
15	)	AMENDED COMPLAINT AND DEMAND FOR
16 vs.	)	JURY TRIAL
17	)	
18 LAW OFFICES OF NELSON & KENNARD,	)	DEFENDANT DEMANDS JURY TRIAL
19	)	
20 Defendant.	)	
21	)	
22	)	

23 Defendant LAW OFFICES OF NELSON & KENNARD (hereinafter  
24 "Defendant") hereby respond and answer the Amended Complaint and  
25 Demand for Jury Trial of Plaintiff DANA PASQUALE as follows:

26 INTRODUCTION

27 1. In response to paragraph 1 of Plaintiff's Amended  
28 Complaint, Defendant lacks information sufficient for it to either  
admit or deny the allegations contained therein and, based thereon,  
denies each and every allegation contained therein.

1           2.     In response to paragraph 2 of Plaintiff's Amended  
2 Complaint, Defendant lacks information sufficient for it to either  
3 admit or deny the allegations contained therein and, based thereon,  
4 denies each and every allegation contained therein.

5           3.     In response to paragraph 3 of Plaintiff's Amended  
6 Complaint, Defendant lacks information sufficient for it to either  
7 admit or deny the allegations contained therein and, based thereon,  
8 denies each and every allegation contained therein.

9  
10                               **JURISDICTION AND VENUE**

11           4.     In response to paragraph 4 of Plaintiff's Amended  
12 Complaint, Defendant lacks information sufficient for it to either  
13 admit or deny the allegations contained therein and, based thereon,  
14 denies each and every allegation contained therein.

15           5.     In response to paragraph 5 of Plaintiff's Amended  
16 Complaint, Defendant admits that it conducts business and is located  
17 in the State of California. Defendant lacks sufficient information  
18 or belief to enable it to either admit or deny the remaining  
19 allegations contained therein and, based thereon, denies each and  
20 every remaining allegation.

21  
22           6.     In response to paragraph 6 of Plaintiff's Amended  
23 Complaint, Defendant concedes that venue is appropriate where the  
24 Amended Complaint was filed.

25     ///

26     ///  
27  
28

**PARTIES**

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2 7. In response to paragraph 7 of Plaintiff's Amended  
3 Complaint, Defendant lacks sufficient information or belief to  
4 enable it to either admit or deny the allegations contained therein,  
5 and based thereon, denies each and every allegation.

6 8. In response to paragraph 8 of Plaintiff's Amended  
7 Complaint, Defendant lacks sufficient information or belief to  
8 enable it to either admit or deny the allegations contained therein  
9 and, based thereon, denies each and every allegation.  
10

11 9. In response to paragraph 9 of Plaintiff's Amended  
12 Complaint, Defendant lacks sufficient information or belief to  
13 enable it to either admit or deny the allegations contained therein  
14 and, based thereon, denies each and every allegation.

15 10. In response to paragraph 10 of Plaintiff's Amended  
16 Complaint, Defendant admits that its business office is located in  
17 Sacramento, California. Defendant denies each and every other  
18 allegation contained therein.  
19

**FACTUAL ALLEGATIONS**

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21 11. In response to paragraph 11 of Plaintiff's Amended  
22 Complaint, Defendant admits the allegations contained therein.

23 12. Defendant denies that it failed to identify itself as a  
24 debt collector attempting to collect a debt where required to so.  
25 Defendant further affirmatively asserts that at all times relevant,  
26 Plaintiff possessed actual knowledge that Defendant's telephone  
27  
28

1 calls, if any, were from a debt collector. Defendant alleges that  
2 Exhibit A is not attached to Plaintiff's Amended Complaint.

3 13. Defendant lacks sufficient information or belief to enable  
4 it to either admit or deny the allegations contained in paragraph 13  
5 of Plaintiff's Amended Complaint and, based thereon, denies each and  
6 every allegation therein. Defendant alleges that Exhibit A is not  
7 attached to Plaintiff's Amended Complaint.

8 14. In response to paragraph 14 of Plaintiff's Amended  
9 Complaint, Defendant denies each and every allegation contained  
10 therein.

11 15. In response to paragraph 15 of Plaintiff's Amended  
12 Complaint, Defendant denies each and every allegation contained  
13 therein.

14 16. In response to paragraph 16 of Plaintiff's Amended  
15 Complaint, Defendant denies each and every allegation contained  
16 therein.

17 17. In response to paragraph 17 of Plaintiff's Amended  
18 Complaint, Defendant denies each and every allegation contained  
19 therein.

20 18. In response to paragraph 18 of Plaintiff's Amended  
21 Complaint, Defendant denies each and every allegation contained  
22 therein.

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**COUNT I**

**DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT.**

19. In response to paragraph 19 of Plaintiff's Amended Complaint, Defendant denies each and every allegation contained therein. Defendant further alleges that the allegation contained in paragraphs 19a, 19b and 19c have been retracted by Plaintiff.

20. In response to paragraph 20 of Plaintiff's Amended Complaint, Defendant denies each and every allegation contained therein and specifically denies that Plaintiff has been damaged in any sum or respect whatsoever.

21. In response to paragraph 21 of Plaintiff's Amended Complaint, Defendant denies each and every allegation contained therein.

22. In response to paragraph 22 of Plaintiff's Amended Complaint, Defendant denies that Plaintiff is entitled to any relief whatsoever.

**COUNT II**

**DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

23. In response to paragraph 23 of Plaintiff's Amended Complaint, Defendant repeats its responses to each and every allegation contained in Count I of Plaintiff's Amended Complaint.

24. In response to paragraph 19 of Plaintiff's Amended Complaint, Defendant denies each and every allegation contained therein.

1       25. In response to paragraph 25 of Plaintiff's Amended  
2 Complaint, Defendant denies each and every allegation contained  
3 therein and specifically denies that Plaintiff has been damaged in  
4 any sum or respect whatsoever.

5       26. In response to paragraph 26 of Plaintiff's Amended  
6 Complaint, Defendant denies each and every allegation contained  
7 therein and specifically denies that Plaintiff is entitled to costs  
8 and/or attorney's fees in any sum or respect whatsoever.  
9

10       27. In response to paragraph 27 of Plaintiff's Amended  
11 Complaint, Defendant denies that Plaintiff is entitled to any relief  
12 whatsoever.

13                   **AFFIRMATIVE DEFENSES**

14                   **FIRST AFFIRMATIVE DEFENSE**

15       28. The Amended Complaint of Plaintiff fails to state facts  
16 sufficient to constitute a claim for relief against Defendant.  
17

18                   **SECOND AFFIRMATIVE DEFENSE**

19       29. Plaintiff is estopped to assert the matters complained of  
20 in her Amended Complaint by virtue of her own unclean hands and  
21 participatory conduct in and about the matters complained of.

22                   **THIRD AFFIRMATIVE DEFENSE**

23       30. Plaintiff failed to mitigate her damages, if any she has,  
24 thereby absolving Defendant from any responsibility therefore.  
25

26                   **FOURTH AFFIRMATIVE DEFENSE**





**NINTH AFFIRMATIVE DEFENSE**

1  
2 36. As a separate and affirmative defense to the Amended  
3 Complaint on file herein, and to each purported cause of action  
4 thereof, this answering Defendant alleges that if the facts alleged  
5 in the Amended Complaint are true, which facts this answering  
6 Defendant specifically denies, then Plaintiff by her words and deeds  
7 has consented to the alleged conduct of this answering Defendant,  
8 and by reason of consent, is barred from seeking or securing the  
9 relief prayed for in her Amended Complaint and each of purported  
10 cause of action therein.  
11

**TENTH AFFIRMATIVE DEFENSE**

12  
13 37. As a separate and affirmative defense to the Amended  
14 Complaint on file herein, and to each purported claim for relief  
15 alleged therein, this answering Defendant alleges that Defendant, at  
16 all relevant times complied with the Fair Debt Collection Practices  
17 Act.  
18

**ELEVENTH AFFIRMATIVE DEFENSE**

19  
20 38. As a separate and affirmative defense to the Amended  
21 Complaint on file herein, and to each purported claim for relief  
22 alleged therein, this answering Defendant alleges that Defendant, at  
23 all relevant times complied with the Rosenthal Fair Debt Collection  
24 Act.  
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**TWELFTH AFFIRMATIVE DEFENSE**

39. This answering Defendant presently has insufficient knowledge or information on which to form a belief as to whether it may have additional, and not yet alleged, affirmative defenses. Defendant reserves the right to assert additional defenses that are revealed by further investigation or by discovery.

**PRAYER**

WHEREFORE, Defendant LAW OFFICES OF NELSON & KENNARD respectfully prays as follows:

(1) That the Amended Complaint against Defendant is dismissed with prejudice and that Plaintiff take nothing by way of his Amended Complaint;

(2) That Defendant be awarded its attorneys fees, costs, and disbursements incurred in the defense of this action; and

(3) That the Court award Defendant such other and further relief as the Court deems just and proper.

Dated: 1/17/13

By: 

ROBERT SCOTT KENNARD  
Attorney for Defendant  
Law Offices of Nelson & Kennard